

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY, Acting through:

Name and Title of Contact: Don W. Zaroban, Fisheries Scientist

Address: Idaho Department of Environmental Quality 1410 N. Hilton St. Boise, Idaho 83706

Telephone: (208) 373-0405

(HEREAFTER THE "CONTRACTOR" or "IDEQ")

AND:

LAVA LAKE FOUNDATION FOR SCIENCE AND CONSERVATION, ACTING THROUGH:

Name: Tess O'Sullivan, Program Manager for Science and Conservation

Address: P.O. Box 2249, Hailey, ID 83333

Telephone: (208) 788-1710

(HEREAFTER "LAVA LAKE")

THE CONTRACTOR AND LAVA LAKE (collectively, the "Parties" and each a "Party")
AGREE AS FOLLOWS:

1. **CONTRACTOR'S DUTIES.** The Contractor, who represents that it is qualified and willing to perform the services described below for the lands owned and leased by Lava Lake (hereafter Lava Lake lands"), shall:

Deliverables associated with payment Due February 1st, 2006:

- A. IDEQ will provide Lava Lake a map of the areas sampled within the Lava Lake operating area (as delineated in the GIS data layer provided to the contractor in advance of the beginning of the contract) during the 2004 - 2005 Wood River Sculpin Survey.
- B. IDEQ will provide Lava Lake a location map of Wood River Sculpin (by stream and point locations) in GIS format. These will include locations identified during the current survey and from those identified in recent surveys by IDEQ and Idaho Fish and Game. IDEQ will provide meta-data associated with these data layers. Wood River Sculpin locations (presence/absence) will be provided for the streams listed in Appendix 1.
- C. IDEQ will provide pictures to Lava Lake of project sampling efforts for use on their web site.

- D. IDEQ will provide a project summary and update of the Wood River Sculpin study to Lava Lake. This project summary should include recommendations to Lava Lake regarding their management of water quality for the benefit of Wood River Sculpin.

2. PAYMENTS.

- A. **Compensation.** For the services described above, Lava Lake shall pay the IDEQ \$2500.00.
- B. **Reimbursement.** Lava Lake shall not reimburse IDEQ for any costs associated with this contract.
- C. **Terms of Payment.** Invoice for services and expenses must be presented to Lava Lake at the address listed above before payments can be made to the Contractor. In accordance with the payment provided for in item 2(A) above, the delivery of invoices for services and associated expenses, submission of required deliverables, and Lava Lake acceptance of the services performed under the contract, Lava Lake shall pay the Contractor promptly.
- D. **Schedule of Payments.** Payment will be made after the receipt and acceptance of deliverables due February 1, 2006.

3. TERM OF CONTRACT. This Contract shall cover work performed beginning May 1, 2005 ("Commencement Date") and shall remain in effect until February 1st, 2006 ("Expiration Date"), or until the work required is satisfactorily completed, whichever comes first. Any extension beyond the Expiration Date must be in writing and signed by Lava Lake.

4. PERFORMANCE OF WORK. The contractor shall perform all work required under this contract in accordance with the highest standards of the Contractor. The Contractor shall perform all work in accordance with all laws and regulations and shall obtain any permits or licenses required. The Contractor shall not be paid for any work found by Lava Lake to be unsatisfactory. In the event Lava Lake believes any work to be unsatisfactory, Lava Lake shall provide Contractor with written notice of the alleged deficiencies. Contractor shall then have thirty (30) days to cure any deficiencies and satisfactorily complete the work.

5. LIABILITY/INSURANCE. The work performed under this contract shall be performed entirely at the Contractor's risk. The Contractor agrees to indemnify and hold Lava Lake harmless for any and all liability or loss arising in any way out of the performance of this agreement. The Contractor shall carry appropriate workers' compensation, hazard and liability insurance coverage during the term of this Contract. Upon request from Lava Lake, the Contractor shall provide Lava Lake with evidence that the appropriate insurance coverage is in effect.

6. TERMINATION AND REMEDIES. Lava Lake may cancel this Contract at any time upon two weeks written notice. Should this occur, payment for work satisfactorily completed shall be adjusted accordingly. In addition, if the Contractor defaults in the performance of the Contractor's duties under this Contract (Section 1), whether for circumstances within or beyond the control of the Contractor, Lava Lake may immediately terminate this

Contract by written notice to the Contractor. Should termination occur as a result of the Contractor's default, Lava Lake shall be entitled to damages from the Contractor resulting from the Contractor's default and shall be entitled to offset any amounts payable to the Contractor for work satisfactorily completed against such damages. The balance of amounts payable to the Contractor for work satisfactorily completed, if any, shall be paid to the Contractor. Notice shall be given to addresses mentioned on Page 1. In the event of a dispute regarding the satisfactory completion of the work under this agreement, the Parties agree to defer the dispute to a neutral third party arbitrator or mediator. Such arbitrator or mediator shall be chosen by both Parties.

7. INDEPENDENT CONTRACTOR. The Parties intend that an independent Contractor-client relationship will be created by this Contract. The conduct and control of the work will lie solely within the purview of the Contractor. The Contractor is not to be considered an agent or employee of Lava Lake for any purpose, and no joint venture or principal-agent relationship exists. The Contractor and employees of the Contractor are not entitled to any of the benefits that Lava Lake provides for its employees. Neither Lava Lake nor the Contractor shall have any right, power, or authority to create any obligation, expressed or implied on behalf of the other.

8. ASSIGNMENT/SUBCONTRACT. The Contractor may not assign or transfer this Contract or subcontract for the work to be performed without prior written consent of Lava Lake.

9. CONFIDENTIAL INFORMATION. During the course of the performance of this Contract, the Parties may have access to materials, data, strategies, systems, or other information relating to the other Party and its programs, which is intended for internal use only. Any such information acquired by one Party about the other Party shall not be used, published, or divulged to any person, firm, or corporation or in any advertising or promotion, or in any manner or connection whatsoever without first having obtained the written permission of the other Party, which permission may be withheld by the affected Party in its sole discretion. Provided, however, the Contractor shall have the right to use the Works produced hereunder as defined above in Section 9.

10. NOTICES. Any notice required by this contract shall be sent by overnight courier or certified mail, return receipt requested, to the parties at the addresses set out above.

11. CHOICE OF LAW/FORUM. This Contract shall be interpreted, construed and governed by the laws of the State of Idaho except for its rules regarding conflict of laws. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Contract, Lava Lake and the Contractor agree that litigation shall be conducted in Idaho, U.S.A. The Parties hereby agree that venue in Idaho shall be proper and that the Parties are subject or shall make themselves subject to personal jurisdiction in that court.

13. BINDING EFFECT/AMENDMENTS. This Contract shall become binding when signed by the Parties. This Contract supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire Contract between the Parties relating to the work set out above. No amendment shall be effective except in writing signed by both Parties.

14. SEVERABILITY. If any provision of this Contract is held invalid, the other provisions shall not be affected thereby.

**LAVA LAKE FOUNDATION FOR
SCIENCE & CONSERVATION**

By: _____

Print Name
Authorized Representative

Signature

Title: _____

Date: _____

**THE IDAHO DEPARTMENT OF
ENVIRONMENTAL QUALITY**

By: Jon Sandoval

Print Name
Authorized Representative

Signature

Title: Chief of Staff

Date: 05/17/09

Appendix 1. Streams to identify occurrences of Wood River Sculpin

Watershed	Stream
Fish Creek	Iron Mine Creek
	Fish Creek
	Long Canyon
	Walton Creek
	East Fork Fish
	West Fork Fish Creek
	Bradsfield
Little Wood	Muldoon Creek
	Thompson Creek
	Argosy Creek
	Copper Creek (Muldoon)
	Little Wood River (above Little Wood Reservoir)
	Sheep Creek
	Blackspar Gulch
	Deadman's Gulch
	Little Copper Creek
Big Wood	Cove Creek
	Quigley Creek
	Indian Creek
	Rock Creek
	North Fork Big Wood River
	Boulder Creek
	Big Wood River
	Trail Creek
	Summit Creek